Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills *and* United Food and Commercial Workers Union, Local 394, AFL–CIO, CLC. Cases 18–CA–13677 and 18–RC–15777

July 17, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The issue presented in this case[1] is whether the judge correctly found that the Respondent committed several violations of Section 8(a)(1) of the Act and engaged in objectionable conduct that interfered with a Board representation election and requires the direction of a second election.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified below.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills, Rapid City, South Dakota, its officers, agents, successors, and assigns shall take the action set forth in the Order as modified.

Substitute the following for paragraphs 2(a) and (b).

''(a) Within 14 days after service by the Region, post at its facilities in Rapid City, South Dakota, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 7, 1995.

''(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

''IT IS FURTHER ORDERED that the election conducted in Case 18–RC–15777 is set aside and that Case 18–RC–15777 is severed from Case 18–CA–13677 and remanded to the Regional Director for Region 18 for the purpose of conducting a second election among employees in the appropriate unit.''

Joseph H. Bornong, Esq., for the General Counsel.
Joseph Dreesen and *William M. Muth, Jr. (Berens & Tate, P.C.)*, of Omaha, Nebraska, for the Respondent and the Employer.
Tom Johnson, of Rapid City, South Dakota, for the Union and the Petitioner.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Rapid City, South Dakota, on January 23 and 24, 1996. On September 11, 1995,[1] the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing, based on an unfair labor practice charge filed on July 7 and amended on August 18, alleging violations of Section 8(a)(1) of the National Labor Relations Act (the Act). On September 25, the Regional Director issued a report on objections, order directing hearing, order consolidating cases and notice of hearing, consolidating for hearing and decision, with the unfair labor practice proceeding, certain objections to conduct affecting representation election conducted in Case 18–RC–15777.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based on the entire record, upon the briefs which were filed, and upon my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

Marvin Hyde owns two businesses which he operates from a single East St. Patrick Street building in Rapid City. The first is Four Seasons Sports Center, which engages in the re-

[1] On April 11, 1996, Administrative Law Judge William J. Pannier III issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In agreeing with the judge's finding that the election should be set aside, we rely solely on the Respondent's unlawful conduct during the critical period prior to the election.

[3] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[1] Unless stated otherwise, all dates occurred during 1995.

tail sale of boats and snowmobiles. Its operations are not involved in this proceeding, although it should not pass without notice that Hyde maintains his own office in the Four Seasons' portion of the East St. Patrick Street building.

The other business in that building is Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills (Respondent). At all material times it has engaged in the business of providing schoolbus, charter bus, and sightseeing services.[2] That is, Respondent has contracts with school districts, to transport children between homes and schools, and it arranges for sightseeing bus services in the Black Hills' area. In addition, Respondent operates a wash bay where buses are washed and cleaned.

To conduct those operations, Respondent employs schoolbus and coach drivers, monitors (who ride with drivers on schoolbuses), mechanics, and wash bay employees. During the period preceding events at issue in this proceeding, at least, Hyde had minimal daily contact with those employees. Day-to-day supervision of schoolbus drivers was provided by Kay Jones. There never have been full-time employees employed in the wash bay, save for the supervisor of wash bay operations. At all material times, that individual has been Debra Ann Knispel. Respondent admits that Hyde, Jones, and Knispel are each a statutory supervisor and its agent within the meaning of Section 2(13) of the Act.

During February and March, a campaign to organize Respondent's employees was initiated by United Food and Commercial Workers Union, Local 394, AFL–CIO, CLC (the Union), an admitted labor organization within the meaning of Section 2(5) of the Act. Among its organizational activities, the Union conducted some general meetings for all eligible employees of Respondent. At least some of those meetings were publicized by leaflet. For example, by leaflet dated March 27, on union letterhead, a ''UNION MEETING'' was announced for Thursday, March 30. Another leaflet, misdated March 27, rather than April 27, announced a like meeting for all ''Gray Line Employees'' on Sunday, April 30. That particular leaflet appeals for those employees to ''continue to sign union authorization cards'' and, moreover, asserts, ''We are very close to demanding recognition and petitioning for a secret ballot election for union certification.''

In fact, on May 8 the Union did file the representation petition in what has become Case 18–RC–15777. Hyde, Jones, and Knispel each testified that this had been his/her first knowledge that Respondent's employees had organized.

On June 13, the Acting Regional Director for Region 18 approved a Stipulated Election Agreement, providing for a mail ballot election, with ballots to be mailed on June 16 and, further, to be returned to Region 18's office by no later than close of business on June 26. The appropriate bargaining unit recited in that agreement is:

> All full-time and regular part-time schoolbus and coach bus drivers, mechanics, monitors, and wash bay employees employed at Respondent's Rapid City, South Dakota facility; but excluding office clerical employees, guards and supervisors as defined in the Act.

The tally of ballots issued on June 30. It shows that of approximately 100 eligible voters, 86 had cast valid ballots.[3] The Union (the Petitioner) had 36 cast ballots, 45 had cast votes against it, and 5 additional ballots were challenged. The challenged ballots were not sufficient in number to affect the results of the election.

On July 7, the Union filed the unfair labor practice charge in what has become Case 18–CA–13677. On that same day, it also filed objections to conduct affecting the results of the election. Essentially the same conduct is now covered by both.

The complaint, as amended at the hearing, alleges various actions by Hyde, Jones, and Knispel which assertedly violated Section 8(a)(1) of the Act. To support those allegations, the General Counsel presented four employee witnesses. KEVIN GILBERTSON worked as a schoolbus driver for Respondent from September 1994, and in the wash bay during May 1995, until he quit in mid-June. Due to surgery, and recovery from it, he was on medical leave from approximately mid-March to some date during the workweek of April 24 to 28. By the time he returned to work, another driver had been assigned to the schoolbus route for which Gilbertson had been the driver prior to mid-March. He was assigned substitute driving until mid-May when he was assigned a special education route. He served as driver on that route until the end of the 1994–1995 school year. There is no allegation that any violation of the Act arose as a result of those employment events involving Gilbertson.

HARVEY ALLEN SHERWOOD worked for Respondent from September 1993 until he quit on December 20, 1995. During that period, he drove a schoolbus and, also, worked part time in the wash bay. BARBARA ANN ROLFES was in her third year of employment with Respondent at the time of the hearing. She had been a schoolbus driver for that entire period. She also had worked in the wash bay, but only during the summer of 1995.

The General Counsel's final employee witness was BEVERLY READD. At the time of the hearing, she also was in her third year of employment with Respondent. During the summer of 1995 she worked as a tour bus dispatcher. For all 3 school years she had worked as a schoolbus monitor.

During the 1994–1995 school year Readd had been working as a monitor on the Robbinsdale route. She testified that on May 15 she had been told by Jones that she would be terminated, at school district request, because she supposedly had struck a child. But, Readd was not terminated immediately. Instead, she was transferred to another route, the Blackhawk one, for the duration of that school year. Yet, she testified, without contradiction, that, a couple of days after May 15, she had asked Jones about working ''the summer program and [Jones] said no because of'' the school district complaint that Readd had struck a child. Respondent contends that Readd never had been discharged, merely reassigned in response to school district request that she be fired. There is no allegation that any of the foregoing employment events violated the Act. However, they provide background

[2] It is admitted that at all material times, Respondent has been an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act, based on the admitted allegations that, in the course of conducting the above-described business operations during calendar year 1995, Respondent derived gross revenues in excess of $1 million and, further, purchased goods valued in excess of $50,000 which it received at its Rapid City facility directly from points outside of the State of South Dakota.

[3] Five ballots were void.

for May events, described in subsection D, infra, which are alleged to have violated the Act.

B. *The Alleged Unlawful Interrogation of Gilbertson by Jones*

The complaint alleges, and the objections state, that on Friday, May 5, Jones had interrogated an employee about that employee's own union activities and, also, those of other employees. Gilbertson testified that on that date, during a discussion with Jones in her office, she had asked if he had signed an authorization card. At that time, he testified, he pointed to the Union's logo on a baseball-style cap which he was wearing and asked, ''What do you think?'' According to Gilbertson, Jones next asked who else had signed cards and was being active in the Union, adding that she had assumed or thought that he was the one who had gotten the union activity started, or had instigated the Union, or had started the union action.

Jones denied ever having any conversation with Gilbertson about signing a union authorization card and, further, ever having asked Gilbertson who was behind the Union or who else might have signed a union authorization card. When asked specifically if she remembered having a conversation with Gilbertson on May 5, however, Jones answered in the negative.

She did agree that employees would have been in and out of her office on May 5, dropping off their timecards. But, she testified that ''there would be no reason for [Gilbertson] to be in my office'' on May 5, since he was substitute driving and ''didn't have his time card at home.'' Still, she conceded that she had seen Gilbertson ''[f]our times a day'' following his return to work in late April from medical leave. Moreover, she testified that, ''[m]y office is probably twelve feet from the time clock'' which ''sits right outside of my doorway to the right.'' At no point did Jones claim specifically that an employee who punches the timeclock, such as Gilbertson had been doing during the period immediately following his return from medical leave, would not have brought his/her timecard from the timeclock to Jones on days when timecards ordinarily are dropped off with her.

As to the union logo on the cap which he testified that he had been wearing on May 5, Gilbertson testified that, after returning from medical leave, he had regularly worn while working both that cap and, on his shirt, a button bearing the Union's logo. Jones denied having noticed Gilbertson wearing either hat or button bearing the Union's logo, pointing out that it is ''pretty common'' for Respondent's male employees to wear hats. Still, called as a witness for Respondent, mechanic William Lamb testified that it was, ''Definitely,'' clear that Gilbertson had been a Union supporter, because ''he was wearing a hat 'Vote Yes' for one.''

As pointed out in subsection A, Respondent's officials, including Jones, each claimed lack of knowledge until May 8 that employees had organized. However, Jones testified that, ''[a]bout the 5th of May . . . somebody brought me a letter, said it was left on their windshield, did I know anything about this. I said no. It was late in the afternoon.'' Jones further testified, ''I went in to Marvin [Hyde]'s office and we both read it.'' Hyde did not mention that event described by Jones, during which the two of them had ''read'' the letter. Instead, he testified that Jones had informed him that ''the drivers were going to have a meeting . . . that evening.''

That latter aspect of Hyde's testimony is significant. For, he claimed that Jones ''didn't really say anything'' as to what the drivers' meeting would be about. Jones testified that the ''letter'' recited that there would be a meeting of employees. She asserted, however, that she and Hyde ''didn't know what it was about and we really didn't know nothing.'' Yet, in a prehearing affidavit, Jones had admitted,

> [a] day or so prior to receiving notice that the [U]nion had filed a petition for election I was given a letter by a driver that announced there was a union organizing meeting for interested drivers to attend. This was a Thursday or a Friday, May 4th or 5th, before Marvin received the notice of the petition.

Three consequences flow from that admission of ''a union organizing meeting'' being announced in the ''letter.''

First, it shows that even before having been faxed a copy of the representation petition on May 8, both Jones and Hyde, to whom Jones admitted that she had shown the ''letter,'' had been aware that the Union was attempting to organize Respondent's employees. Second, it contradicts any testimony or argument on behalf of Respondent that it had not been until May 8 that its officials had known that a union organizing campaign was in progress. That is, it objectively shows that such testimony about May 8 is not credible.

Finally, it undermines the testimony by Jones that she could not have interrogated Gilbertson on May 5 about the Union, because she had not known on that date about any union activity. Clearly, she had known on that date that such activity was being conducted. Furthermore, it is likely that Respondent had known of such activity even before May 4, the earlier date mentioned by Jones in her affidavit.

As described in subsection A, the Union had sent notices of a general meeting to be held on April 30. Tom Johnson, the Union's president, testified that he also had sent letters to limited numbers of employee-organizers about meetings for them only. Still, it could not have been one of those letters to which Jones referred, because in her above-quoted affidavit description of the ''letter,'' she stated that the meeting was ''for interested drivers to attend.'' Consequently, the meeting referred to in the letter had to be a general one—for all employees interested in attending, as opposed to employees conducting organizing activity on behalf of the Union.

Jones denied specifically that the letter which she received, and showed to Hyde, had been the notice of the April 30 union meeting. But, Johnson denied that there had been ''an open meeting'' during the 2 weeks subsequent to the one on April 30. And there is no evidence that there had been any meeting ''for interested drivers'' on May 5. Nor is there evidence of any such meeting on any other date during early May. Furthermore, there is no evidence that Respondent's drivers or other employees had been participating in meetings independent of the Union.

Aside from the above-described testimony and affidavit, Jones did not describe the ''letter'' to which she referred with particularity. Nor did she testify that it had been discarded, after she and Hyde had read it. Hyde did not so testify, either. And Respondent never claimed that the letter was not available to it for production during the hearing. Yet, it did not produce that letter, to show that some general meet-

ing other than the one on April 30 had been specified in it. In the overall circumstances, therefore, it is a fair inference that Jones had seen and had shown Hyde a copy of the Union's leaflet announcing the April 30 meeting. In turn, that means that Respondent, in fact, did have knowledge the Union's organizing campaign even before May began.

C. *The Alleged Unlawful Wage Increase*

Knowledge of notice to Respondent about the April 30 union meeting is significant in connection with another allegation and objection: that pay raises were granted to certain wash bay employees to discourage union support. That increase is asserted in both to have occurred on May 19. It appears to actually have occurred on May 5, however, the same date as Gilbertson testified to having been questioned by Jones, as described in subsection B, supra. The significant facts pertaining to that increase, as opposed to the motive for it, are not truly disputed.

During 1995 prior to May, part-time employees working in the wash bay started at $4.50 an hour. But, by May two schoolbus drivers, Sherwood and Judy Lund, were being paid $5 an hour whenever working in the wash bay. For the pay period April 29 to May 12, and thereafter, all wash bay employees began receiving $5 an hour whenever they worked in the wash bay.

Mechanic Lamb testified that, prior to May, Wash Bay Supervisor Knispel had told wash bay employees that ''she was going to talk to'' Hyde about a pay raise for wash bay employees. Knispel testified to but a single occasion when she had done so. During March, testified Knispel, she had recommended to Hyde that the starting wash bay rate be raised, because she would have to attract applicants for the busy summer tourist season. ''At that time [Hyde] did not give me an answer,'' she testified. Hyde agreed that nothing had come of that wage increase recommendation by Knispel: ''I just said I'd take it under consideration.''

Then, testified Knispel, ''Approximately May 5th I was going through some things and I found that [Sherwood and Lund] . . . were already making above what the other employees were making.'' So, she went to Vice President Paula Hyde, who is Marvin Hyde's spouse, ''told her what the situation was and told her that I thought everybody needed to have a pay raise at that time.'' Knispel explained that ''most of the other people had been there a little bit longer [than Sherwood and Lund] and it's not fair for only two people to be making more than the other people.'' Knispel also testified that she mentioned generally to Paula Hyde ''how that would affect [summer wash bay] hiring.''

The two women went to bookkeeper Cheryl Sherman, testified Knispel, who said that, with regard to Sherwood and Lund's wash bay rate, ''She had made a mistake.'' Knispel testified that Paula Hyde said that she would talk to her husband about the situation and ''she had come out later and told me that Marvin said that it would be okay to give everybody raises then.'' Knispel denied that the Union had influenced her above-described actions. She also denied that the Union had been discussed at all during that sequence of events.

Bookkeeper Sherman was not called as a witness, though there was neither representation nor evidence that she was not available to testify during the hearing. Paula Hyde did corroborate Knispel's testimony about the latter's request, during ''the morning May 5th,'' as to whether ''we could have a wage increase so it would be easier to hire and she had brought it to my attention that some were making $5.00 an hour and some weren't, and could we just raise it to that amount.'' Concerned about Respondent's need to hire qualified summer wash bay help, testified Paula Hyde, she reported to her husband that ''Deb had asked if we could increase the wages for wash bay for our summer season and he said 'Sure.''' Paula Hyde denied that there had been any mention of the Union during these conversations.

It should be emphasized that, in her account of her statements to her husband about the wash bay raise, Paula Hyde made no mention whatsoever of having said anything to him about some employees already being paid more than $4.50 an hour for wash bay work. Rather, so far as her testimony goes, she confined her description of the reason for granting an increase to the very reason which Marvin Hyde had been ignoring for almost 2 months, following Knispel's March wage increase recommendation. So, also, did Marvin Hyde: ''My wife came to me the morning of May 5th and asked if it would be okay. She said Deb is having a hard time. She has been trying to hire people. She wants to be able to pay them more.'' According to Hyde, he replied only, ''Fine. Go ahead.'' Four points are worth noting about this wash bay pay increase, which Knispel announced to wash bay employees after they were authorized by Marvin Hyde.

First, he denied that the Union's campaign had influenced his decision to grant it, claiming that he had not known about that campaign until May 8. But, that latter assertion is contradicted by Jones's admission that she had brought the ''letter,'' which ''announced there was a union organizing meeting for interested drivers,'' specifically to Hyde's attention before May 8, as discussed in subsection B.

Second, while Knispel claimed that it had been a wage inequity among then employed wash bay workers which had led her to again raise the subject of wash bay increases, as pointed out above, neither Marvin nor Paula Hyde testified that, during their May 5 conversation, any mention had been made of some employees receiving more than $4.50 an hour for wash bay work. Consequently, the very reason that Knispel claimed had caused her to resurrect the pay increase subject never had been a part, so far as the evidence discloses, of Marvin Hyde's decision to grant an increase to some wash bay employees.

Third, in light of that fact, the record is left with no reason for his decision other than the one which he had been ignoring for almost 2 months. That is, to improve the chances of hiring qualified summer wash bay help, Knispel had recommended during March that the pay rate be increased for employees working there. However, Hyde had taken no action whatsoever to implement that recommendation until May. Given the absence of any evidence that he had been aware in May that some wash bay employees were being paid more than others, he never explained why he then suddenly reversed field and implemented that recommendation.

To be sure, he testified that, on May 5, his wife had told him that Knispel ''is having a hard time. . . . trying to hire people.'' Still, Paula Hyde did not corroborate that portion of her husband's account of their May 5 conversation. She never testified that she had reported to him that Knispel ''is having a hard time.'' Nor did Knispel testify that she had complained to Paula Hyde of encountering difficulty hiring

qualified wash bay personnel prior to May 5. Indeed, there is no evidence whatsoever that Knispel had even been trying to hire summer wash bay help before May 5.

Finally, in the circumstances, Hyde's decision to grant the wash bay wage increase was an abrupt one. Having done nothing for over a month about Knispel's recommendation, he chose to grant the increase after the Union's organizing drive had to have been brought to his attention, as a result of being shown the Union's ''letter.'' Of itself, such proximity in timing, between union activity and employer action, suggests that there ''was really no coincidence at all, but rather [that the employer-action was] part of a deliberate effort by management to scotch the lawful measures of the employees before they had progressed too far toward fruition.'' *NLRB v. Jamestown Sterling Corp*., 211 F.2d 725, 726 (2d Cir. 1954).

D. *Hyde's May 23 Meeting with Employees and its Immediate Aftermath*

Marvin Hyde testified that, after having received a copy of the petition in Case 18–RC–15777 on May 8, he was advised by counsel ''not to be discussing wages, benefits, things of that nature'' with ''[t]he employees.'' Nevertheless, he admittedly disregarded that advice and did so.

On May 22 and 23 he acknowledged having convened meetings of employees on one of the motor coaches. Two amendments to the complaint allege that, during the May 23 meeting, Hyde ''offered to establish an employee grievance committee to deal with employee complaints in order to discourage [employees] from engaging in union activities,'' and, on that same date, ''told employees that another employee's recent termination had been rescinded in order to discourage support for the [U]nion.'' That latter allegation pertains to the May events involving Beverly Readd, described in subsection A, supra.

Gilbertson gave the principal account regarding what Hyde had said during the May 23 meeting.[4] Three portions of Gilbertson's testimony about Hyde's meeting remarks are significant. First, Gilbertson testified that Hyde had said that his hands were tied as to wage and benefits levels by his contract with the school district. Hyde acknowledged that he had mentioned ''the contract that we had with the school system and the fact that we had one year left,'' and ''that the prices were fixed'' under it.

Second, Gilbertson testified that Hyde had said:

> He thought it would be detrimental for us to have this third party, that we didn't need representation to work for them. He kind of apologized that he probably neglected us and dropped the ball is what he said, and that he wanted to get together with us and his idea was to form a committee of drivers, monitors, regular ed drivers, special ed drivers and monitors that would meet with him on a monthly basis kind of thing and discuss problems that we had.

According to Gilbertson, Hyde added that ''he would take . . . a portion of that meeting time every month and just listen to us and our complaints and our concerns and that everything could be handled much quicker and much easier that way than going through a third party.''

Hyde denied generally having made, during the March 23 meeting, any promises about changes he might make if the Union did not become the representative of Respondent's employees. Still, he did acknowledge having said, ''I didn't need a third party,'' and that, in making that statement, he had been referring to the Union. He also admitted having mentioned, during that meeting, an employee committee. Thus, the following testimony was given, sometimes seemingly grudgingly, by Hyde during cross-examination:

> Q. BY MR. BORNONG: Do you remember saying at that meeting that you could tackle employees' problems within this employee committee much quicker than you could with a third party?
>
> A. Something maybe would have been said to that effect.
>
> Q. You said that more or less? I mean if not in exact words something like that more or less?
>
> A. Could have, yeah.
>
> Q. Did you talk about what employee problems you were going to tackle in this committee?
>
> A. No.

[4] During the hearing, the General Counsel offered a portion of a tape which assertedly contained a recording of Hyde's May 23 motor coach remarks. Respondent's counsel objected to its admission, unless he at least was allowed to first hear the entire tape to verify that it did not contain additional matter affecting or relating to the portion being offered by the General Counsel, especially when it came to light that a portion of the meeting's recording subsequently had been overrecorded. However, the General Counsel objected to allowing Respondent's counsel to hear any portion of the tape other than that which was being offered, arguing that the additional portions contained matters personal to Gilbertson and unrelated to the portion being offered.

When part of a recording is offered into evidence, ''an adverse party may require the introduction at that time of any other part . . . which ought in fairness to be considered contemporaneously with it.'' Fed.R.Evid. 106. Though no one questioned the veracity of counsel for the General Counsel's evaluation that he regarded other portions of the tape as unrelated to the portion he was offering, there are subjective aspects to an issue of relatedness which may legitimately be disputed between counsel. Even though counsel offering a portion of a tape honestly may believe that the remainder is unrelated, opposing counsel, also honestly, may conclude that another portion ought ''in fairness to be considered contemporaneously with'' the portion being offered. In that respect, the situation is no different from those presented whenever only a portion of a document is being offered into evidence. The entire document must be submitted for opposing counsel's inspection, so that he/she can determine whether other portions also should be received.

Obviously, Respondent's counsel could not even argue the issue of relatedness without at least being allowed to hear the entire tape. Of course, an in camera inspection by me might have obviated the legitimacy of such an assertion. See, for example, the procedure provided for evaluating relatedness of portions of prehearing witness statements under Board's Rules and Regulations, Series 8, Sec. 102.118(b)(2). But, in camera inspection was not requested here. So, there is no basis for considering such an alternative procedure in connection with the tape.

In the circumstances, I deny the General Counsel's request for reconsideration of my ruling excluding the tape, as well as the transcript of a portion of it. Lest there be any question, I have not read the transcript of that portion contained in the rejected exhibit file.

Q. Did you say with a third party you could take a year or more before you could tackle problems or accomplish things?

A. That could have been brought up, yeah. I could have said that I guess.

Q. Words to that effect? Did you say something like that?

A. Probably, yeah. I think—

Q. And again you referred to the committee that you could do things much quicker than that, right? Didn't you say something like that?

A. Yes. Yeah.

Q. You said more or less that you and the employees understand each other's problems better than a third party?

A. Yes.

During redirect examination an effort was made, with only partial success, to mitigate the effects of those last four answers:

> [D]o you remember—and this is very important—do you remember whether you said you could tackle problems faster than the [U]nion or you might be able to tackle problems faster than the [U]nion. I mean if you don't remember, you don't remember.
>
> A. I don't remember.

By the next question, however, it appeared to have dawned on Hyde what answer best served Respondent's interests:

> Q. Okay. And also you testified if the [U]nion got in here it might take a year or more to solve problems I guess. Did you say might or would take?
>
> A. Might.

As to the concept of an employee committee, in place of representation by the Union, Hyde testified, ''I brought up the fact that we had a committee and I apologized for dropping the ball on not demanding that they continue the meetings.''[5] According to Hyde, there had been employee committee meetings during [p]revious years.'' When cross-examined, he claimed that the committee had first been set up, ''Probably three, four years ago.'' That answer, however, turned out to create problems for Hyde, during subsequent questioning, which eventuated in a retreat by him to lack of recollection as to when the committee had been created:

> Q. Had any other unions prior to the [Union] this year ever petitioned to represent employees of the [Respondent] drivers and monitors?
>
> A. Yes.
>
> Q. When was that?
>
> A. I don't recall the date.
>
> Q. Wasn't that about three or four years ago?
>
> A. Well, it could be.
>
> Q. Right about the same time as you set up the committee in the first place?
>
> A. Uh—I can't recall.

As with the relative ease of resolving problems with a committee instead of a third-party representative, an effort was made during redirect examination to minimize any damage caused by those cross-examination answers. Hyde testified that the union drive 3 or 4 years earlier had not resulted in a petition for election. He further testified that the committee never subsequently had been disbanded, but ''had just kind of quit meeting and I dropped the ball by not demanding that they meet.'' As to when those meetings had ceased purportedly, Hyde testified vaguely that that had occurred ''within the last year or so prior to [his] May 23rd meeting with the employees.''

Hyde's generalized descriptions of an existing employee committee were not merely vague. They were not corroborated by any other witness, employee or official, nor by other evidence adduced during this proceeding. That is, there is no evidence of any meetings between Respondent and an employee committee so late as during 1994. In fact, there is no evidence whatsoever of such meetings having occurred during 1993 or 1992.

In fact, there is no evidence whatsoever of any such meetings having actually occurred at any time and, if so, no particularized evidence of what might have occurred during them. In short, to the extent that Hyde had been resurrecting the idea of an employee committee during the May 23 meeting, there is no specific evidence that he had been referring to an entity that had been functioning, or ever had actually functioned, to address employment-related problems of Respondent's employees. In any event, whether a newly proposed concept or a resurrected one, clearly Hyde was holding forth the concept of an employee committee, as an alternative to the Union, for dealing directly with Respondent's employees, and for trying to resolve their employment problems, complaints, and grievances. As will be seen, the evidence shows affirmatively that his promise to do so did sway the representation choice of at least one employee.

The third portion of Gilbertson's testimony about the May 23 meeting pertained to Beverly Readd's then existing situation. As described in subsection A, supra, she testified that on May 15 she had been told that she was to be fired. Respondent denied that Readd ever had been fired. Jones and Hyde claimed that, during May, an ultimate decision had been deferred, pending submission of a report concerning her misconduct by the school district.

In that connection, a memorandum by Jones, dated May 19, was produced. It states, ''I did not dismiss Beverly from employment [on May 15] due to the late date of the school year. I placed her on a different schoolbus route and asked the school district to investigate this matter more.'' Still, if Readd was not dismissed on May 15, the memorandum does not state that Readd was not to be terminated at the end of the 1994–1995 school year. It merely recites that Jones did not dismiss Read on that ''late date of the school year.'' Of itself, the memorandum's wording does not refute Readd's description of the words spoken to her by Jones on May 15.

There can be do doubt that, as of May 23, Readd and Respondent's other employees believed that Readd's employ-

[5] In testimony further showing her lack of candor, when asked if she remembered Hyde talking about the committee, Jones answered: ''He was asked about meetings, everyone meeting together,'' though she claimed that she did not remember who has asked that question. No one else corroborated her testimony that it had been an employee, rather than Hyde, who had initiated discussion during the meeting of an employee committee. And, as quoted above, Hyde acknowledged that he had ''brought up'' the committee during the May 23 meeting.

ment with Respondent would be ending. Hyde effectively admitted that, on May 23, he had been aware of that belief. Gilbertson testified that, during the motor coach meeting, he had brought up the situation of ''an employee who was told she was fired and couldn't come back next year based on the complaint of a schoolbus driver she had been monitor for and there had been no investigation. Nobody had talked to her about it and nothing had been dealt with. She was just told she wasn't going to come back and she was fired because of it[.]'' While Gilbertson testified that Hyde had responded that ''his hands were tied,'' because of Respondent's contract with the school district, Readd testified that Hyde had ''said something about nobody being fired[.]'' In either event, neither Gilbertson nor Readd testified that Hyde had asked which employee was being discussed, before giving his answer to Gilbertson.

That also was the effect of the testimony given by Hyde and Jones. The latter testified that Hyde had ''responded . . . that he thinks that we know who we are talking about and nobody has been dismissed.'' Similarly, Hyde testified, ''I stated I felt I knew what they were talking about so I stated there hadn't been anybody let go or fired. . . . And wouldn't be.'' Indeed, Hyde's knowledge during the May 23 meeting of which employee was being mentioned was acknowledged even more explicitly during cross-examination:

> Q. You just remember a discussion of an employee who had been fired?
>
> A. Yeah.
>
> Q. And you knew immediately who that was, didn't you?
>
> A. I think I knew who they was [sic] trying to refer to.

That awareness on May 23 by Hyde should not escape notice. As described in subsection A, supra, he had minimal daily contact with Respondent's employees and left day-to-day supervision of schoolbus drivers to Jones. Though it might be anticipated that a driver's discharge could be regarded as sufficiently significant to be brought to his attention, there is no basis in the record for inferring indeed, for speculating—that complaints about a driver, and resultant transfer of that driver to another route, would naturally have come to Hyde's attention. Yet, while Readd's name was never mentioned during the May 23 meeting, Hyde immediately knew to whom Gilbertson's question made reference. And Hyde never explained how he had known immediately to whom Gilbertson was referring.

A preponderance of the credible evidence shows that Readd had been told on May 15 that she would be terminated. But even if Readd truly had not been fired on that date, Hyde's statements to the assembled employees on May 23 represented a change in the direction that Respondent then had been following. For, Jones' testimony and memorandum show that she had deferred a final decision on whether to terminate Readd until the school district submitted its report about Readd's supposed striking of a child. So far as the evidence shows, no such report had been submitted by the time that Hyde met with the employees on May 23. Nevertheless, he told them not only that no one had been fired, but also, as quoted above, ''And wouldn't be.'' In consequence, whatever the school district report might reveal regarding the incident, Hyde told the employees that Readd would not be fired.

Following the May 23 meeting, Readd trailed Hyde and Jones to the latter's office and asked if Hyde's remarks, during that meeting, had meant that she was not fired or had her job. Readd testified that Hyde answered her question by saying, ''You're working aren't you? Just be cool.'' Hyde testified that he had spoken to Readd ''occasionally'' following the March 23 meeting and, on those occasions, ''told her that nothing had happened. [The school district] hadn't proved anything and that maybe it would be best to just let it die out.'' But, neither he nor Jones denied that Hyde had made the above-quoted statements, after the March 23 meeting, that Readd attributed to Hyde. More importantly, his above-quoted remarks to Readd, which he claimed he had made to her, tend to contradict his admitted assurances to the assembled employees that Readd ''wouldn't be'' dismissed. Whatever he may later have told her hardly serves to diminish the, in effect, promise to the employees on May 23 that she ''wouldn't be'' fired.

E. *The May 24 Alleged Interrogation and Threats of Knispel*

The complaint alleges, and the objections protest, that on May 24 Knispel unlawfully interrogated Gilbertson and threatened that Respondent would discontinue operations because of employees' union activities. Gilbertson testified that, during the morning after Hyde's May 23 motor coach meeting, Wash Bay Supervisor Knispel accused him of being a liar and of not knowing what he was talking about in his remarks to Hyde during that meeting. According to Gilbertson, Knispel continued by saying that Hyde would never negotiate or deal with a union and, before dealing with a union, would drop Respondent's school district contract, get rid of the buses and close the doors. She also asked, testified Gilbertson, if he had signed an authorization card and ''who else was involved.''

Knispel denied having asked Gilbertson if he had signed an authorization card and, further, denied having asked who was behind the union drive. She also denied having said that Hyde would not tolerate or stand for a third party, that Hyde would not deal with a third party, and that Hyde would close if the Union got in. However, she agreed that she had participated in a conversation with Gilbertson during which she had discussed the effects of the Union on Respondent's employees:

> [H]e just asked me how I felt about the [U]nion and I just said that it caused a lot of mistrust with, you know, people that had been friends in the past, that you could not trust completely any more, you could not talk to anybody any more, and that's all I said and that was my very own opinion.

Knispel never explained the basis for those assertion to Gilbertson—never explained why she had told him that the Union ''caused a lot of mistrust'' and why she felt, because of its campaign, ''you could not trust'' and ''talk to anybody anymore[.]''

Both Gilbertson and Knispel testified that Sherwood and mechanic Lamb had been present during their conversation. Neither corroborated Knispel's above-quoted account of what

had been said. Sherwood testified that, when he had walked in during Gilbertson and Knispel's conversation, he had heard her saying ''in my opinion'' if the employees become represented by the Union, Hyde would drop the contract for the schoolbuses.

When testifying, Lamb appeared to be trying to avoid saying anything that might hurt Respondent but, at the same time, appeared to be trying to avoid saying anything that might leave him vulnerable to a charge of contravening the oath which he had taken to testify truthfully:

> Q. Did you ever hear Deb discuss the [U]nion with Kevin Gilbertson or Harvey Sherwood or any other employees besides yourself?
> A. I don't believe so.
> Q. Did you ever hear Deb say anything to any employees to the effect that if the [U]nion got in here Marv would shut down?
> A. I didn't—I don't remember that, no.
> Q. You don't remember her saying that?
> A. No.

Of itself, an answer expressing lack of recollection ''hardly qualifies as a refutation of . . . positive testimony and unquestionably was not enough to create an issue of fact between'' Gilbertson and Lamb. *Roadway Express, Inc. v. NLRB*, 647 F.2d 415, 425–426 (4th Cir. 1981). Beyond that, it was clear, from other portions of his testimony, that Lamb was not using phrases such as ''I don't believe'' and ''I don't remember'' as his manner of expressing denial that such statements had been made in his presence. For, when he intended to deny something, he did so without equivocation:

> Q. Okay. At the time of [the wash bay wage increase] meeting did Deb say anything about the wage increase having anything to do with the [U]nion?
> A. No.
> . . . .
> Q. An again do you believe that anybody would have had to ask Kevin Gilbertson if they supported the [U]nion?
> A. No.
> Q. Or if they had signed a card?
> A. No.
> . . . .
> Q. Did Deb ever say to you ''I'm going to try to get you a full time position''?
> A. No.
> . . . .
> Q. Did Deb ever tell you to go and get your card back from the [U]nion?
> A. No.

F. *The Alleged Unlawful Statements of May 26*

Several allegations and objections pertain to statements made on May 26 or, at least, on about that date. For example, the complaint alleges that Hyde threatened to discontinue operations because of employees' union activities and, further, promised unspecified benefits and threatened to withhold those benefits, to discourage union activities. And, the objections state that Hyde harassed Gilbertson, threatened to terminate Respondent's business if the Union was selected as the employees' representative, and promised raises and benefits if the Union was not selected.

Both Gilbertson and Hyde testified that they had participated in a meeting in Hyde's office within 2 or 3 days of the May 23 motor coach meeting, as a result of Gilbertson's request for a meeting. Both also testified that, during that meeting, they had discussed Gilbertson's surgery, and Gilbertson had asked if his work assignments and pay since returning from medical leave had been affected by his union activity.

During the meeting, testified Gilbertson, Hyde renewed discussion of an employee committee. According to Gilbertson, Hyde said that ''he'd like to put this committee together, that it would work a lot smoother than going through the third party and how it put things on hold. He talked about how he had had some plans, some things that could be done and stuff that would be put on hold.'' As an example of a change which might be made, testified Gilbertson, Hyde suggested that, instead of assigning monitors to schoolbus drivers for an entire school year, monitors could be rotated every month or two ''to avoid . . . any kind of personal conflict or anything like that'' between driver and monitor. Of course, that specific suggestion had some application to Readd's situation, as described in subsections A and D, supra, about which Gilbertson had protested during Hyde's May 23 motor coach meeting.

Asked by Hyde if he thought that idea would be a good one, Gilbertson testified that he replied that it ''would probably eliminate a lot of tension'' and would be a good idea. Hyde then said, according to Gilbertson, ''I can't do anything like that if this third party gets involved because that would put—put everything on hold,'' adding ''that if the [U]nion came in he wouldn't be able to—his hands would be tied as far as doing anything for us for some of the complaints we had which had to do with wages and benefits and those kind of things.'' Gilbertson testified that, in addition, Hyde had said that ''if the [U]nion came in and made demands on him on our behalf that he would in turn have to make demands on the school board which in turn could possibly cause him to lose the contract and that they would bring in a different company to run the buses.''

In point of fact, Hyde never did deny much of Gilbertson's description of that conversation. He testified that he did not ''remember [Respondent's school district contract] as being brought up'' during his meeting with Gilbertson. But, he never denied specifically having warned Gilbertson, during the meeting, that union demands on behalf of the employees might lead to loss of Respondent's schoolbus contract. Significantly, Hyde admitted that ''we discussed maybe it would be beneficial if the monitors could be rotated amongst the routes.'' Following his meeting with Hyde, testified Gilbertson, he encountered Knispel as he walked through the wash bay. The complaint alleges that, during their ensuing conversation, Knispel said that she had interrogated and harassed another employee, to require that employee to obtain return of the authorization card which that employee had signed.

Gilbertson testified that Knispel first asked how his meeting with Hyde had gone. He testified that, when he replied that it was ''my business,'' Knispel said that she hoped Gilbertson now understood Hyde better and ''got somewhere with him,'' because Hyde ''would not deal with the [U]nion,

that he would get rid of the buses and close the doors before he'd deal with the [U]nion.'' According to Gilbertson, Knispel said that she had made those same statements—about getting rid of the buses and closing—to Pamela S. Ivey, the monitor on the schoolbus which Knispel drove.

The subject of Ivey arose, testified Gilbertson, when Knispel said that ''some people had asked to get their authorization cards back'' and identified Ivey as one of them. Gilbertson testified that Knispel said that she had been asked by Ivey how to retrieve her authorization card and, in response, Knispel ''told her how to get her authorization card back''—''how to do it and who to write to and that she could get it back, that she didn't have to be involved in it if she didn't want to.'' Gilbertson further testified that Knispel also said that other employees ''had asked to get their authorization cards back,'' but declined to identify those employees to Gilbertson.

At one point, Knispel testified that she recalled a day when Gilbertson had told her that ''he was going to go in and visit with'' Hyde about ''safety on the buses and some pay raises for the schoolbus employees.'' But, she denied that Gilbertson had gotten back to her about ''how his meeting with [Hyde] went[.]'' Knispel denied having said that Hyde would not tolerate or stand for ''a third party,'' denied having said that Hyde ''would not deal with a third party,'' and denied having told Gilbertson that Hyde would close down if the Union ''got in.'' She further denied having told other employees about a discussion with Ivey concerning return of an authorization card which Ivey had signed. Still, both Knispel and Ivey admitted that such a conversation had occurred.

Significantly, Knispel initially denied having participated in any discussions with Ivey during May or June regarding the Union: ''No. We just told each other that we were not going to discuss the [U]nion because she knew that I was in management and she was an employee and I could not discuss that with her.'' Contradicting that unequivocal denial, and the explanation accompanying it, however, Knispel then admitted that she and Ivey had discussed the Union, when Ivey had asked about getting her authorization card back:

> She said that there were some people in the [U]nion that had pushed her into signing a card and that she didn't want to and she wanted to be out of it, and all I said to her was that all you need to do is write a letter to Tom Johnson and you can get your [U]nion card back.

Left unexplained by Knispel was how she had known that, to get the card back, all Ivey ''need[ed] to do is write a letter to Tom Johnson[.]''

Also unexplained by Knispel was why she had chosen to even discuss that subject with Ivey when, testified Knispel, ''I was just instructed to say nothing'' to employees about the Union. That instruction, she testified, had been issued by Hyde who had said not to, ''Discuss, yeah, with anyone.''

When describing Knispel's remarks following his meeting with Hyde, Gilbertson testified that schoolbus driver Rolfes had been ''approximately three to four feet away from us.'' In fact, Rolfes testified that she had overheard Knispel tell Gilbertson that Hyde ''is never going to go for this union'' and ''would close the doors and give up the contract before . . . the [U]nion came in[.]'' According to Rolfes, Knispel also asked, ''[D]id we realize that we could go back and ask for our authorization cards and that she had talked to Pam Ivey into getting hers back from her [sic], and that she had someone else she was going to talk to,'' though Knispel did not identify that other person.

Rolfes acknowledged that Knispel had not directed her, or anyone else that Rolfes heard, to ask for return of a signed authorization card. Nonetheless, Rolfes testified that, on this same occasion, Knispel ''kind of pulled me off to the side and asked my [sic] how my night went last night and asked me if I had signed a card, an authorization card.'' Knispel denied that she ever had asked Rolfes if the latter had signed a union authorization card.

Rolfes placed Sherwood and Lamb as also having been present during this conversation that had started between Knispel and Gilbertson. In fact, Rolfes testified that, during this same conversation, Knispel had asked Sherwood ''who is all participating as far as the [U]nion, who has all signed authorization cards.''

Sherwood testified that, in addition to Knispel's above-described conversation on May 24, discussed in subsection E, supra, ''there were several other times that we talked [about the Union] that it was just trivial.'' Asked for an illustration of such a conversation, Sherwood testified:

> Again it was just basically about how I felt about the [U]nion, how I thought it would be great to have one in, and she was all for it before one of the—one of her friends that rode with her, Pam Ivey I think was her name, I'm not quite sure about her last name, got forced—she felt she got forced to sign a card and after that Deb was completely against the [U]nion. Pam Ivey rode on her bus and after Pam Ivey felt like she got pressured to sign an authorization card then Deb was completely against the [U]nion after that.

When testifying in connection with the statements attributed to Knispel during Gilbertson's post-Hyde-meeting conversation with her, Lamb again expressed uncertainty as to some of what had been said. Thus, asked if Knispel ever had told him to go and get his authorization card back from the Union—a request which no one alleged or objected that Knispel had made of Lamb—Lamb answered unequivocally, ''Nobody ever said that to me.'' In contrast, asked if Knispel ever had said anything to him about Ivey asking for her card back from the Union—which is at root of an allegation and an objection—Lamb answered, ''I don't remember that either.''

Rolfes testified that on ''the same day I talked to'' Knispel about ''how my night went last night and . . . if I had signed a card,'' Knispel had said ''that Marvin would be calling me into his office to talk to me about the [U]nion.'' In fact, a conversation did ensue in Hyde's office between Rolfes and Hyde, although Hyde claimed that ''Barb came to me . . . two or three days after the main meetings.''

In the course of testifying about how this particular conversation had arisen, Hyde asserted that it was not uncommon for Rolfes to ask for a meeting with him, because, ''She had come to me several times before'' concerning, ''Personal matters with other [wash bay] employees,'' particularly Sherwood. That testimony should not pass without further discus-

sion. In the first place, Hyde gave no particularized testimony about such supposed prior meetings between Rolfes and himself. Second, while Rolfes was in her third year of employment with Respondent by the time of the hearing in the instant matter, she testified without contradiction that she had worked in the wash bay, ''Just this last summer''—that is, during the summer of 1995. Accordingly, it is difficult to ascertain how she could have ''come to [Hyde] several times before'' late May of that year to discuss personal matter or friction with other wash bay employees.

As pointed out in subsection A, supra, Hyde had minimal day-to-day contact with Respondent's employees. For her entire work history with Respondent, Rolfes had been a schoolbus driver. Jones, who directly supervises schoolbus employees, testified that Hyde had ''very little'' interaction with the employees. More specifically, it is undisputed that, during their May 26 conversation, Rolfes had pointed out to Hyde, ''I didn't even know who you were at the time,'' and, ''I just thought you worked here,'' to which Hyde ''agreed that that was part of the troubles, part of the problem down there from everyone not knowing him, not getting to know him.'' Of itself, that uncontroverted May 26 exchange serves to contradict Hyde's testimony that Rolfes ''had come to me several times before'' May 26 with problems. And the other considerations enumerated above reinforce the conclusion that Hyde's portrayal of how the May 26 meeting came to occur, as but another of a series of ongoing meetings between Rolfes and himself, was not a truthful one.

Rolfes testified that the meeting began with Hyde asking if she was married and, when she responded that she was not, saying that if she were, Rolfes would ''understand that it takes two people in a relationship, you know, to make a strong marriage[.]'' According to Rolfes, she said that she ''understood where he is coming from there being in a relationship'' and Hyde said, ''[I]t's kind of like the employees and the employers they have to work together to make a good business, to make it a go, and he just that he felt that we could do this together without the [U]nion and that we could put a committee together ourselves[.]'' Hyde asked how she felt ''about that and that I could get involved in that,'' testified Rolfes, and she replied that ''I thought that sounded good.'' Rolfes testified that she asked, ''[W]hen would we have these [committee] meetings and he said before or [sic] safety meetings and that type of thing.''

According to Rolfes, Hyde ''then asked me how I felted towards the [U]nion and I said, well, I would stand behind [Respondent] 100 percent if we could do this.'' As she was walking out of the office, Rolfes testified, Hyde asked, ''So how do you feel about this,'' and she answered, ''Well, my vote is in my back pocket,'' by which she had meant that she was undecided.

With respect to the conversation described by Rolfes, Hyde denied only that he had asked how she would be voting in the representation election. Of course, Rolfes never claimed that he had done so. ''Mostly it was about the personal matter in the wash bay,'' Hyde testified. Yet, he did not describe with particularity what ''personal matter'' purportedly had been discussed during that meeting. Nor did he deny having renewed with Rolfes mention, initiated during the May 23 motor coach meeting described in subsection D, supra, of an employee committee as an alternative to representation by the Union. Further, Hyde did not deny specifically having asked Rolfes how she felt toward the Union and how she felt about his proposed employee committee alternative to representation by the Union.

G. *Knispel's Alleged Promise to try to Secure Full-Time Employment Status for Sherwood and Lamb, and Her Alleged Interrogation of Sherwood*

As set forth in subsection A, supra, wash bay employees always have been part-time workers. One consequence of that status is that those employees do not receive from Respondent the same benefits, retirement, full vacation, as do employees who are classified as full time. The complaint alleges, and the objections protest, that Knispel offered full-time employment status to two employees, Sherwood and Lamb, to discourage their union support and activities.

Sherwood testified that, as he and Lamb were working in the wash bay on about May 28, they were discussing how nice it would be to ''be on full time since we are working so many hours, not only in the wash bay but also I was driving a school bus and [Lamb] was monitoring.'' According to Sherwood, Knispel had been present and had said she would ''like to get, try and get you guys full time since you are working so many hours not only in the wash bay but the school bus.'' Sherwood testified that he asked, ''Well, are you going to talk to Marvin about this,'' to which Knispel responded, ''Yes[.]'' He acknowledged that no specific mention had been made of the Union during this conversation.

When appearing as a witness for Respondent, Lamb did not truly deny that Knispel had made the above-described statements:

> Q. BY MR. DREESEN: In again May of 1995 do you recall a conversation with you and Harvey Sherwood and Deb Knispel when full time employment was discussed?
>
> A. No, I don't think so.
>
> . . . .
>
> Q. Did Deb ever say to you ''I'm going to try to get you a full time position''?
>
> A. Not to me.
>
> Q. Did you ever witness her say that to Harvey Sherwood?
>
> A. I don't recall, no.
>
> . . . .
>
> Q. Again you never—do you remember Deb promising anybody a full time job?
>
> A. No, I don't.

In short, Lamb persisted in this area giving the same uncertain and equivocal answers as he provided in other areas, as quoted in preceding subsections.

Beyond that, by its terms, the answer ''Not to me,'' to the question as to whether Knispel had said, ''I'm going to try to get you a full time position,'' does not contradict Sherwood's testimony that, when *he* had asked, ''[A]re you going to talk to Marvin about this,'' Knispel had responded to *him*, ''Yes[.]'' Nor does the ''[n]ot to me'' answer truly contradict Sherwood's testimony that Knispel had said, *both to Sherwood and Lamb*, that she would ''like to get—try and get *you guys* full time[.]'' (Emphasis added.) In short, Lamb's articulated denial appeared intended by him as an effort to aid his employer, but not one that could be used, in

his opinion, for any charge that he had given an untruthful answer.

In fact, during cross-examination, Knispel admitted having promised to talk to Hyde on behalf of Sherwood and Lamb. But, not about full-time status. Rather, she testified, ''I said that since they had worked all winter long that I would see if Marvin Hyde would possibly give them a few days of vacation during the summertime,'' adding when she testified, ''[T]hat is one benefit but it does not mean that they are full time employees'' and, moreover, it ''would just be . . . what I would consider an extra treat.''

The complaint alleges, and the objections state, that Knispel unlawfully interrogated Sherwood on May 30. He testified that, on approximately that date, as he and Knispel were working, they were talking about the Union and ''she just asked me if I signed an authorization card and how I felt about it,'' to which he acknowledged having signed a card and said, ''I think the [U]nion would be a good thing for'' Respondent.

Knispel denied ever having asked Sherwood if he had signed an authorization card. She acknowledged that Sherwood would ''make little comments about the'' Union to her, but testified that she had told him, on such occasions, ''that I was not allowed to talk about it.'' Yet, the persuasiveness of her testimony is diminished by Knispel's admissions, described in subsection E, supra, that she had spoken to employees about the Union causing ''a lot of mistrust'' among ''people that had been friends in the past'' and that, because of its presence, ''you could not trust . . . [or] talk to anybody any more,'' as well as by her admitted discussion with Ivey as to how the latter could retrieve the authorization card which she had signed.

H. *Hyde's June 16 Telephone Conversation with Readd*

The final allegations are that, on June 16, during a telephone conversation, Hyde offered backpay to an employee to discourage union activity by the employee and, in addition, asked whether that employee had received a ballot for the representation election. The conversation was with Readd. There is no real dispute about what Hyde had said to her, though there is one respecting the inferences and conclusions to be drawn from his statements to Readd.

As described in subsection A, supra, following the school district's complaint, Readd had been transferred to a different schoolbus route. As a result, her pay was reduced for the period of her service on that route. When Readd discovered that fact, she wrote a letter to Hyde protesting the reduction, which amounted to a total of $80 or $83 take-home pay.

She testified that Hyde telephoned her on June 16, ''the day the ballots were coming out,'' and said that she could pick up a check for the difference in pay whenever she wanted to do so. ''At the end of the phone call he asked me if I got my ballot,'' testified Readd.

Hyde acknowledged that the telephone conversation had occurred, though he claimed, ''I don't know if I called her or she called me.'' He did not dispute having told Readd that she could pick up a check from Respondent for the pay difference. And he admitted that, ''I possibly asked her'' if she had received her ballot. As to the pay difference, Hyde testified, ''I felt she had it coming,'' and that he had felt that way ''because the school had asked us to take her off the route. They had asked us actually to fire her and we said we weren't going to do that.''

As to his conceded question concerning the ballot's receipt, Hyde testified that ''several people had asked me about them because they hadn't received anything.'' Yet, as set forth in subsection A, supra, the ballots were not scheduled to be mailed until June 16, the very day of Hyde's telephone conversation with Readd. So, it should have been obvious to him that she would not have received her ballot by the date of their telephone conversation. Moreover, Hyde never identified any of the ''several people'' who supposedly ''had asked [him] about them,'' and there is no independent evidence that any employee ever had done so.

II. DISCUSSION

When they appeared as witnesses, Respondent's officials, Marvin Hyde, Jones, and Knispel, seemed to be trying to tailor their accounts to portray events and conversations in a light most favorable to Respondent's position, rather than trying to candidly testify about events and conversations as they actually had occurred. A review of the record serves to confirm that impression, as shown by the illustrations of those three witness' accounts set forth in the subsections of section I, supra. I do not credit Marvin Hyde, Jones, and Knispel.

To be sure, I did not always regard as reliable the testimony of the General Counsel's four employee-witnesses: Gilbertson, Sherwood, Readd, and Rolfes. Still, their sometimes unreliability appeared to arise more frequently from limitations of perception of events and conversations, and from imperfect recollection of what had occurred during them, than from attempts to deliberately tailor their accounts. Moreover, with respect to events and conversations put in issue by the complaint and objections, their accounts, in large measure, were either undenied or were supported by objective considerations and by the testimony of Respondent's own witnesses.

What emerges from the totality of the credible evidence is the picture of an employer which tried to discourage its employees from selecting union representation, primarily by offering, through promises and beneficial actions, to deal directly with them instead, augmented by threats of adverse consequences should they reject that alternative offer. Clearly, a promise of benefit had been conveyed by Hyde's words concerning an employee committee during the motor coach meeting of May 23, as discussed in section I,D, supra, and by his words to Gilbertson and Rolfes, during his individual meetings with each of them on May 26, as described in section I,F, supra.

Hyde admitted that, during the motor coach meeting, he had said, ''I didn't need a third party'' an, further, had mentioned an employee committee. He did not deny having said that such a committee could meet monthly with Respondent to address employment complaints and concerns and, moreover, admitted having said that such a committee could more quickly resolve those complaints and concerns than would be possible through third party representation. He admitted that by ''third party,'' he had been referring to the Union and, beyond that, it is likely that employees naturally would have so understood his use of that phrase.

Hyde never denied having pursued the subject of an employee committee during his subsequent individual conversa-

tions with Gilbertson and Rolfes. Thus, it is undisputed that, during the conversation with the former, he had said that ''he'd like to put this committee together, that it would work a lot smoother than going through the third party.'' Nor did Hyde deny having promised Rolfes that ''we could put a committee together ourselves'' as a vehicle for employees and Respondent ''to work together to make a good beginning'' in their relationship.

Respondent argues, and it appears conceded, that an employee committee had existed in the past at Respondent. In consequence, contends Respondent, Hyde had been doing no more than pointing to a practice of representative alternative which already existed. Of course, nothing in the Act precludes employers, faced with organizing campaigns, from publicizing existing benefits and practices, even ones of which employees may not have been fully aware. See *Bakersfield Memorial Hospital*, 315 NLRB 596, 601 (1994), and cases cited therein. Still, such benefits and practices must be shown to actually have existed at the time of being publicized. Respondent has failed to make such a showing.

As discussed in section I,D, supra, Hyde conceded that, by May 23, there had been no meetings between Respondent and an employee committee ''within the last year,'' and Respondent presented no evidence whatsoever of any such meetings earlier during 1994, nor during 1993 and 1992. Consequently, at most from the perspective of Respondent, Hyde's May remarks had referred to a long-dormant practice—one which can hardly be viewed as ''existing'' during the period preceding the May 23 motor coach meeting and the following individual meetings with Gilbertson and Rolfes. Therefore, whether characterized as institution or resurrection, Hyde's words conveyed a promise of benefit—an offer to deal directly with employees, through a newly formed or reinvigorated employee committee—to address their employment complaints and concerns, as an alternative to representation by the Union. Such a promise inherently interferes with exercise of the statutory right to freely choose a bargaining representative and, accordingly, violates Section 8(a)(1) of the Act.

That conclusion is reinforced by certain promises of benefits extended to employees by Hyde and, also, by Knispel. Hyde admitted that, during the motor coach meeting, he had promised that employee complaints and concerns could be addressed more quickly through an employee committee, than through representation by the Union. Further, it is undisputed that he repeated that promise to Gilbertson during the May 26 meeting between the two men. Of itself, such a promise tends naturally to interfere with employee exercise of free choice in deciding whether or not to choose a statutory bargaining agent. Therefore, by promising to more quickly address employment complaints and concerns if employees forego representation by the Union and, instead, deal directly with Respondent through a committee, Respondent violated Section 8(a)(1) of the Act.

A second, more specific promise, was made to the assembled employees during the motor coach meeting on May 23, as well as to Beverly Readd immediately after that meeting, as set forth in sections I,A and D, supra, she had been told, before May 23, that her employment with Respondent would be terminated, though she was being allowed to finish out the 1994–1995 school year. I credit her testimony as to what Jones had said on May 15 and, in view of the considerations discussed in section I,D, supra, do not credit Jones and Hyde's denial that Readd had not been terminated in mid-May, effective at school year's end. Any uncertainty about her termination was contingent solely upon the school district report of the alleged child-striking incident which, as of May 23, Respondent was awaiting.

When Gilbertson raised the subject of Readd's termination during the motor coach meeting on that date, however, not only did Hyde say that Readd had not been fired, but, disregarding whatever the school district's report might reveal, he admittedly promised that Readd ''wouldn't be'' terminated. And, at least in Hyde's view, he effectively repeated that promise to Readd, immediately following the motor coach meeting.

Given the context of that promise not to terminate Readd—as part of a meeting during which Hyde was promising generally to more quickly address employment complaints and concerns, if employees dealt directly with Respondent through a committee, rather than through the Union—employees would naturally view that more specific promise as an illustration of willingness by Hyde to follow through on his general promise to address employment complaints and concerns if employees were willing to deal directly with Respondent, rather than through a third party. Moreover, the immediacy of his promise, in response to Gilbertson's complaint, constituted a demonstration of how quickly Respondent could resolve such a complaint through direct dealing with its employees. Obviously, such a promise inherently interferes with employee exercise of free choice regarding a bargaining agent and, accordingly, violates Section 8(a)(1) of the Act.

During his May 26 meeting with Gilbertson, not only did Hyde repeat his more general promise to address employee complaints and concerns more quickly if directly dealt with by employees, though a committee, but Hyde provided another specific illustration of willingness to do so: he proposed a change in the system by which monitors were assigned to schoolbus drivers, from an annual one to a monthly or bimonthly one ''to avoid . . . personal conflict or anything like that,'' as described in section I,F, supra. Of course, Readd had been employed as a monitor. And Gilbertson had been the employee who had protested her termination, during the motor coach meeting. Consequently, the promise to consider monitor rotation had been one likely to be of interest to Gilbertson. In fact, it is undisputed that Hyde questioned Gilbertson as to whether the latter viewed such a proposal as beneficial, and Gilbertson replied that he viewed it to be a good idea.

Hyde's, in effect, promise to consider monitor rotation was made during a conversation in which Hyde repeated his promise that employment complaints and concerns could be addressed more quickly through direct dealing with employees, than through third party representation. There is no evidence that Hyde ever before had sought employee reaction to contemplated employment changes. Certainly, there is no evidence that Hyde ever had floated such proposals for Gilbertson's consideration and reaction. Indeed, Hyde never explained why he had chosen to submit the monitor rotation proposal for Gilbertson's opinion. In the foregoing circumstances, an employee naturally would view Hyde's monitor rotation proposal as an illustration of Hyde's expressed general willingness to deal directly with employees if they

rejected representation by the Union. As a result, his statements constituted an implied promise to consider monitor rotation if employees rejected representation by the Union, in violation of Section 8(a)(1) of the Act.

Hyde was not the lone official of Respondent who demonstrated to employees Respondent's willingness to address their complaints and concerns without the need for representation by the Union. As set forth in section I,G, supra, Sherwood testified that, on May 28, Knispel had promised to talk to Hyde about converting Sherwood and Lamb from part-time to full-time status, thereby allowing them to enjoy benefits extended by Respondent only to full-time employees.

Knispel denied having made that promise, although she conceded that she had discussed trying to get for Sherwood and Lamb vacation benefits which only full-time employees enjoyed. While Lamb did not expressly corroborate Sherwood's testimony about Knispel's promise, his method of answering questions about that particular conversation, as well as about others, left the impression that he was trying to avoid saying anything that might injure Respondent's interestsand, concomitantly, his own—by conceding that, in fact, Knispel had made the promise attributed to her by Sherwood.

Knispel never denied having overheard Sherwood and Lamb discussing, on May 28, how full-time status would benefit them. Such undisputed remarks supply a background which tends to support a finding that Knispel likely did promise to try securing full-time status for those two employees—did promise to try to address their concern. Certainly, Respondent was not reluctant to make promises of that nature. As discussed above, Hyde demonstrated a willingness to do so. I credit Sherwood's description of Knispel's promise to ''try and get you guys full time since you are working so many hours not only in the wash bay but the school bus.''

To be sure, no specific mention was made by Knispel about the Union, in connection with her promise to Sherwood and Lamb. Yet, that promise had been made not too long after the Union had filed its representation petition. During the motor coach meeting, Hyde had expressed willingness to deal directly with employees regarding their employment complaints and concerns. Even though Sherwood and Lamb were not raising full-time status through an employee committee, Hyde's statements about Readd's employment, during and after the motor coach meeting, and his statements to Gilbertson about monitor rotation, demonstrated to employees that even an employee committee was not necessarily the exclusive method contemplated by Respondent for directly addressing their complaints and concerns.

In these circumstances, an employee would naturally view Knispel's promise, of an effort to try obtaining full-time status, as a demonstration of Respondent's willingness to directly address employment-related concerns, without the need for union representation. Such a promise, especially in overall circumstances of Respondent's other unlawful conduct, inherently interferes with employee free choice concerning representation. Therefore, I conclude that a preponderance of the evidence establishes that Knispel promised to try to obtain full-time status for Sherwood and Lamb, that such a promise interfered with employee rights under the Act, and that it violated Section 8(a)(1) of the Act.

Respondent did not confine its conduct to promises. It also engaged in actions which served to demonstrate to employees that their employment complaints and concerns could be resolved by dealing directly with Respondent, without the need for representation by the Union. In one respect, that was shown by Hyde's promise, during the May 23 motor coach meeting, that Readd would not be fired. Not only can his words be classified as a promise, but they also can be characterized as an action—rescission of an employee's previously announced termination. For, consistent with Hyde's promise during the motor coach meeting, Readd was not terminated at the end of the 1994–1995 school year.

There was more to Readd's situation than her restored employment. As described in section I,H, supra, Readd complained about her pay loss, as a result of her mid-May route transfer, and Respondent then compensated her for that lost pay. Hyde claimed that he had authorized that payment to Readd merely because, in essence, he regarded that payment as a fair course to follow. However, there is no reason to conclude that Hyde was being any more candid, in advancing that explanation, than in other aspects of his testimony which were not advanced with candor. Indeed, certain factors show that the pay award to Readd was intended as a demonstration of the benefits of dealing directly with Respondent, rather than through selection of the Union as a collective-bargaining representative.

It had been on the same day as the ballots were mailed to Respondent's employees that Hyde informed Readd that she could pick up a check for the lost compensation. During that same conversation, Hyde specifically referred to receipt of her ballot for the representation election. His explanation for doing so, described in section I,H, supra, was not logical and was not advanced persuasively. In the circumstances, it appears that Hyde's question about the ballot was no more than an effort at subtle suggestion to Readd that, when casting her ballot, she should take into account that she had been awarded the pay differential as a result of her direct appeal to Hyde—without having to enlist the third-party support of the Union.

Such a message, of course, was consistent with the one which Respondent had been explicitly conveying to its employees, to discourage them from choosing representation by the Union. Readd had earlier benefited from a demonstrated implementation of that message, when her then pending termination had been rescinded. Payment of her lost wages naturally would be viewed as yet another demonstration of Respondent's announced willingness to address employee complaints and concerns directly, without the need for union representation. Therefore, I conclude that a preponderance of the credible evidence establishes that Respondent violated Section 8(a)(1) of the Act by paying Readd for the pay which she had lost following her route transfer.

That conclusion is reinforced by the fact that payment to Readd had not been the first time that Respondent utilized its power of compensation as a means of demonstrating their lack of need for representation by the Union. As described in section I,B, supra, during early May a pay increase had been awarded to wash bay employees then being paid less than $5 an hour. That increase had been awarded shortly after Hyde and Jones had learned of the Union's organizing campaign, through receipt of a copy of the Union's ''letter.'' It was an increase that Knispel had been recommending for over a month that Hyde grant to all wash bay employees.

But, until after learning of the Union's campaign, it had been a recommendation that Hyde had ignored.

Knispel and Paula Hyde suggested, as a reason for the timing of the pay increase, the discovery that Sherwood and Lund actually had been receiving more than $4.50 an hour for wash bay work. However, neither of them had been the one who had made the decision to grant the increase to wash bay employees. The individual who had made that decision had been Marvin Hyde. And, as pointed out in section I,B, supra, there is no evidence whatsoever that he had been informed of Sherwood and Lund's pay situation. Further, at no point did Marvin Hyde even claim that, in reaching his decision to increase the wash bay pay rate to $5 an hour for all employees, he had considered what Sherwood and Lund were being paid for that work. That is, at no point did Marvin Hyde claim that he had decided to grant the increase to equalize the pay rate of all wash bay employees. Instead, he relied only upon the reason which he had been ignoring for over a month—potential difficulty in hiring summer help—for making that decision and he never explained his reason for that timing—never explained why early May had suddenly seemed a better time to award a pay increase for wash bay work, as opposed to March or April, or as opposed to later when summer wash bay applicants would be sought.

To be sure, Respondent did not explicitly connect the wash bay pay increase and the Union. Still, its award of that increase was beneficial to employees who received it. Moreover, it was an increase that affected employees received as a result of a decision made exclusively by Marvin Hyde, without the need for outside, third-party intervention. Those facts would not likely be lost sight of by affected employees when, less than 3 weeks later, Hyde began stating expressly that Respondent could more readily address employment complaints and concerns by dealing directly with its employees, through an employee committee, without the need for representation by the Union. In these circumstances, therefore, I conclude that the wash bay wage increase interfered with and restrained employee support for the Union, in violation of Section 8(a)(1) of the Act.

Beyond unlawfully granting and promising to grant benefits through direct dealing with its employees, Respondent's officials also made threats which had a natural effect of interfering with and coercing employees in the exercise of their statutory right to exercise free choice in deciding whether or not to choose the Union as their collective-bargaining agent. As discussed above, Hyde promised employees that Respondent could address their employment complaints and concerns by dealing directly with those employees, through a committee of them, rather than through the Union. Respondent also began addressing some employment concerns which it, at least, perceived to be a likely source of employee dissatisfaction, for example raising wash bay pay rates, rescinding Readd's termination, promising to consider monitor rotation and to try securing full-time status for two part-time employees. Concurrently, Hyde warned employees that Respondent would not be able to continue addressing their employment complaints and concerns so quickly, if they chose representation by the Union.

As set forth in section I,D, supra, Hyde admitted, albeit grudgingly, that ''I could have said . . . I guess'' that it could take a year or more to ''tackle problems or accomplish things'' with a third party representing the employees. He never denied that, during his May 26 individual meeting with Gilbertson describe in section I,F, supra, he had warned that ''if this third party get involved,'' then it would ''put everything on hold'' and ''his hands would be tied as far as doing anything for [Respondent's employees] for some of the complaints [they] had which had to do with wages and benefits and those kind of things.'' In short, having begun to immediately address employment concerns of employees, in response to the Union's campaign, Respondent's owner also warned that he would not be able to continue engaging in that unlawful conduct should the employees choose to become represented by the Union.

Clearly, Respondent's sudden willingness to promptly address employees' complaints and concerns constituted conduct which benefited those employees. It is that very benefit which makes Respondent's resultant promises and actions unlawful, by inherently interfering with the employee free choice guaranteed by the Act. See, *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 686 (1944), and *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964). No less an interference with that statutory right is Hyde's accompanying warning that Respondent would have to cease engaging in that beneficial, albeit unlawful, immediate attention to employee complaints and concerns, should the employees choose to be represented by the Union. Obviously, loss of the newly promised and seemingly acted upon, attention to their complaints and concerns would inherently interfere with employee free exercise of rights accorded them by the Act.

This is not an issue of prediction versus threat. For, with regard to Hyde's statements about not being able to continue promptly addressing employee complaints and concerns, he effectively was using unfair labor practices to create an additional unfair labor practice. That is, having begun engaging in unlawful promises and actions, Hyde effectively used those unfair labor practices as a pad for launching a warning that, if they selected the Union as their representative, employees would lose the benefits being conferred upon them by Respondent's unlawful abrupt willingness to entertain their concerns and by its promises and actions to address those concerns. Thus, employees' union support would naturally be restrained by a warning of loss of benefits which, themselves, constituted a natural interference with employee rights guaranteed by the Act. Therefore, I conclude that Hyde's warnings constituted a threat which violated Section 8(a)(1) of the Act.

In addition, a preponderance of the credible evidence shows that Respondent did make threats to discontinue schoolbus operations if the employees chose to become represented by the Union. As described in section I,E, supra, both Gilbertson and Sherwood testified that, on May 24, Knispel had said that Hyde would drop Respondent's schoolbus contract if the employees became represented by the Union. As described in section I,F, supra, Gilbertson and Rolfes testified that Knispel had repeated that threat on May 26.

Knispel denied having threatened that Respondent would discontinue schoolbus operations if the employees became represented by the Union. As concluded above, however, she was not generally a credible witness and I find no reason to credit her denials that she had made such a threat.

In fact, Hyde acknowledged that he had discussed the effects of unionization on Respondent's ability to continue se-

curing a contract for schoolbus operations. He mentioned that subject during the May 23 motor coach meeting, as described in section I,D, supra. He did not deny having mentioned during his individual meeting with Gilbertson, described in section I,F, supra, how the school district might change bus companies if the Union made demands which compelled Respondent to seek higher school district payment for bus service. Consequently, the effect of unionization on Respondent's continued schoolbus operations, in fact, had been a subject of discussion following the filing of the representation petition.

When she testified, Knispel appeared hostile toward the Union and toward the concept of unionization of Respondent's employees. Indeed, she admitted that, despite having been instructed not to discuss the Union with Respondent's employees, she had told some of them that the Union's campaign had sowed distrust among ''people who had been friends in the past,'' with the result that no one ''could . . . talk to anybody any more[.]'' Accordingly, viewed from Knispel's perspective, she had every basis for being antagonistic toward the Union and its supporters. That attitude tends to support a conclusion that she was disposed to making statements which would deter employees from supporting the Union.

Even if, as Sherwood testified, Knispel had prefaced her threat with the words ''in my opinion,'' those words hardly erase the substance of the threat which followed. After all, she is a statutory supervisor. Employees were entitled to assume that there was some basis in fact for her statements—that she was not idly warning of a consequence about which she had no special knowledge as a result of her supervisory status, particularly as Kyde had discussed on May 23 that same subject of effects of unionization on Respondent's schoolbus contract. In those circumstances, Knispel's threat that Hyde would discontinue schoolbus operations if Respondent's employees became unionized violated Section 8(a)(1) of the Act.

Respondent's promises of benefit, grants of benefit, and threats do not stand alone. They were accompanied by certain other statements which are alleged to have violated the Act. For instance, in the course of threatening that Hyde would discontinue schoolbus operations on May 26, Gilbertson testified that Knispel also had said, as described in section I,F, supra, that she had stated that threat to Ivey when the latter had asked how to retrieve the authorization card which Ivey had signed. Though both Knispel and Ivey denied that the former said anything improper to the latter when Ivey had asked about recovering her signed card, Knispel never actually denied having told Gilbertson that she had done so. Moreover, Rolfes also testified to having heard Knispel say that ''she had talked to [sic] Pam Ivey into getting hers [card] back from'' the Union. Clearly, those are words of persuasion, rather than being ones which express no more than having provided information.

No statutory supervisor is free under the Act to persuade, or to try persuading, employees to retrieve authorization cards which those employees have signed. Such remarks go beyond the limit of providing information about how to do so, which is allowed under the Act. Even if Knispel never actually persuaded Ivey to retrieve her card from the Union, her portrayal to other employees that she had done so left those employees with an impression that a supervisor was persuading employees to rescind their cards. Indeed, both Gilbertson and Rolfes testified that Knispel had said that she did intend to approach at least one employee other than Ivey.

A natural chilling effect on employees is created by a supervisor's assertion that she/he is trying to persuade employees to rescind authorization cards. Those signed cards indicate union support. For employees to learn that a supervisor is trying to persuade coworkers to revoke such support, by persuading them to retrieve their cards, is to leave those employees with a feeling of futility about retaining support among employees for representation by a union. Inherently, such statements interfere with the rights of employees to enlist the support of other employees for such representation. Therefore, Knispel's statement to Gilbertson and Rolfes that Knispel had talked Ivey into retrieving her signed card from the Union, and had repeated the threat that Hyde would discontinue schoolbus operations if the employees because unionized, in the course of that persuasion, violated Section 8(a)(1) of the Act.

It should not pass without notice that both Gilbertson and Rolfes testified that, in the course of saying that she had persuaded Ivey to retrieve her authorization card, Knispel also stated that she intended to talk to, at least, one other person about doing so. Immediately afterward, Knispel drew aside Rolfes and asked if the latter had signed an authorization card. Later that day, Rolfes was summoned to a meeting with Hyde who, it is undenied, repeated to her his earlier promise to deal directly with employees, through an employee committee, concerning employment problems and, after doing so, asked how Rolfes now felt about that plan and about the Union.

It is difficult to escape the inference that, through the above-described conduct, Respondent was targeting Rolfes as another employee who might be persuaded to retrieve a signed authorization card, as a result of Hyde's express promise for Respondent and the employees ''to work together . . . without the [U]nion'' and by his express question to Rolfes as to how she felt about that alternative. Questioning of her that day had been conducted not only by Respondent's owner, but, before that, by her immediate supervisor. Hyde was not someone with whom Rolfes had been familiar during her employment by Respondent. Until the Union began organizing Respondent's employees, Rolfes had not even known who Hyde was.

Knispel's question to Rolfes had been preceded by an unlawful threat of closure and by an unlawful statement about having persuaded another employee to retrieve her signed authorization card. Hyde's questioning had been preceded by another of his unlawful promises to deal directly with employees, through an employee committee, if they would forego representation by the Union. So far as the evidence discloses, Rolfes had not been an open union advocate prior to May 26. When questioning her, neither Knispel nor Hyde informed Rolfes of a valid purpose for doing so. Nor did either official inform Rolfes that she was free not to answer their questions and that she would not be subjected to reprisals as a result of her answers. In these overall circumstances, I conclude that Knispel's and Hyde's interrogations of Rolfes had been coercive and, therefore, violated Section 8(a)(1) of the Act.

Rolfes was not the only employee to testify about being interrogated by Respondent's officials. As described in sec-

tion I,B, supra, Gilbertson testified not only that Jones had asked if he had signed a card, but that she also had asked who else had done so and was being active in the Union, and had said that she assumed or thought that Gilbertson had initiated the union activity at Respondent. That latter remark represents a not particularly subtle way of ascertaining whether Gilbertson had been the employee who first had contacted the Union.

Furthermore, as described in section I,E, supra, Gilbertson testified that, on May 24, he had been asked by Knispel if he had signed an authorization card and ''who else was involved'' in the Union's organizing campaign. In effect, Gilbertson testified to an added instance of interrogation by Knispel on May 26, as described in section I,F, supra, when she asked him how his meeting with Hyde had gone. Inasmuch as she knew by then that he was a union supporter, her question would naturally appear to an employee to be an effort to ascertain if Hyde had been able to change Gilbertson's attitude toward the Union. And, of course, it had been near the end of that conversation that Knispel had drawn aside Rolfes who testified that Knispel asked if Rolfes had signed an authorization card.

Sherwood also testified that, on May 30, he had been asked by Knispel if he had ''signed an authorization card and how I felt about it,'' as described in section I,G, supra. In that regard, it should not be overlooked that, by May 30, Knispel was claiming, at least, that she had persuaded an employee to retrieve her signed card from the Union and intended to talk to another employee about doing so. Also, by that date, employees had been subjected to Respondent's unlawful promises, actions and threats, all having a natural effect of dissuading employees from continuing to support union representation. Thus, the fact that Knispel likely knew on May 30 that Sherwood had signed a card, of itself, does not necessarily mean that she could not have asked such a question. For, it is equally inferable that her interrogation about that subject had been intended merely as a starting point for the more important following question as to how Sherwood now ''felt about it.'' Of course, his response, that he thought the Union ''would be a good thing,'' would have seemingly foreclosed any further discussion by Knispel as to whether Sherwood would likely be willing to retrieve his signed card.

Unlawful interrogation also was attributed to Hyde. It is undisputed, as described in section I,F, supra, that on May 26 Hyde asked what Gilbertson thought of the monitor rotation proposal, made during their one-on-one conversation. As concluded above, that proposal had been one component of Respondent's unlawful promises and actions demonstrating that, without the need for union representation, employees could secure Respondent's attention to their employment complaints and concerns by dealing directly with it. Similarly, later that same day, Hyde would draw that equation—between direct dealing with Respondent through an employee committee and foregoing representation by the Union—somewhat more explicitly, when he asked Rolfes how she ''felt towards the [U]nion'' and how she felt about an employee committee.

A similar connection between Respondent's willingness to address directly employee complaints and not supporting the Union tended to be shown during Hyde's June 16 telephone conversation with Readd. As described in section I,H, supra, he admittedly asked Readd if she had gotten her ballot, after having informed her that Respondent would compensate her for pay lost as a result of having been transferred to the Blackhawk route. Hyde's explanation for that question was not credible and there is no evidence supporting his testimony advancing that explanation.

Respondent argues that Gilbertson's testimony about being questioned as to whether he had signed a card should not be credited. His open union support left Knispel with no need to ask if he had signed one. Yet, even were I to conclude that Gilbertson had not been asked that question, the foregoing review of the evidence pertaining to interrogations shows that there had been significant other instances of interrogation by Knispel and by Hyde. Furthermore, in each instance where Gilbertson testified to having been questioned—by Jones and, later, by Knispel—he also testified that each supervisor had continued by asking about other employees supporting the Union. Thus, interrogation regarding his own union support had been used as a springboard for continuing to interrogate him about coworkers' involvement. In other words, the initial question was utilized as a starting point for interrogations about other employees' union involvement.

At no point, so far as the record shows, were any questioned employees informed that he/she did not need to answer the interrogations by Respondent's officials. Nor does the evidence disclose that, on those occasions, any of the employees had been informed that reprisals would not be taken against him/her for the answer given.

Although Jones and Knispel were first-line supervisors, Hyde was Respondent's owner. Accordingly, he possessed the power of ultimate control over continued employment of Rolfes and Readd. Moreover, Hyde's interrogation was conducted as a particular component of other unlawful conduct designed to discourage employee support for the Union, in return for Respondent's promises to deal directly with them.

Of course, all of the interrogation took place against a background of other unfair labor practices which had a natural effect of making employees apprehensive about the answers which they gave to questions put to them by supervisors. In those circumstances, Respondent's interrogation would tend to naturally interfere further with the exercise of employees' statutory right to support the Union, and to restrain them in their willingness to do so. In the totality of the circumstances, therefore, I conclude that a preponderance of the credible evidence establishes that Respondent engaged in interrogation which had been coercive and which violated Section 8(a)(1) of the Act.

III. THE OBJECTIONS TO THE ELECTION

Ordinarily, though not universally, commission of unfair labor practices during the preelection period—from the filing of the representation petition until the election date—is conduct which warrants setting aside the election and conducting a second one. Here, the interrogation of Gilbertson by Jones and the announcement of the wash bay pay increase, though not actual realization by employees of the extra money conferred by it, occurred before the petition in Case 18–RC–15777 had been filed. In addition, Sherwood testified that, at most, he had told only one other employee about Knispel's interrogation on May 29 and Rolfe testified that she had told no one about her May 26 conversation with Hyde. Further-

more, several allegations were added to the complaint by amendment at the beginning of the hearing. The conduct encompassed by the amendments was not specifically enumerated in the Union's objections. Nor was that conduct included in the Regional Director's Report on Objections. Nonetheless, all of those considerations do not preclude a conclusion that Respondent's other unfair labor practices were sufficiently serious and pervasive to warrant setting aside the representation election conducted in June.

Most prominently, objection 5 states that, ''[o]n or about May 24 and 26,'' Hyde and other supervisors threatened ''to terminate the business . . . and promised . . . benefits if the Union campaign was unsuccessful.'' As concluded in section II, supra, Knispel did threaten that Hyde would terminate schoolbus operations if the employees became represented by the Union. Her statements were made to Gilbertson. But, as described in sections I,E and F, supra, they had been overheard by, respectively, Sherwood and Lamb, and by Rolfes, Sherwood and Lamb. Moreover, in contrast to the above-mentioned interrogation of Sherwood by Knispel, and to the above-mentioned statements by Hyde to Rolfes, there is no evidence that Knispel's closure threats had not been repeated to coworkers by any of the employees who heard her make them.

Concern about absence of dissemination ceases altogether when Hyde's statements during the motor coach meeting on May 23, ''about May 24,'' are taken into account. As concluded in section II, supra, during that meeting he promised 32 assembled employees—over a third of those who would cast ballots—that Respondent would deal directly with them concerning their complaints and concerns, without the need for union representation, and that Respondent could directly resolve employment complaints and concerns more quickly that could occur with the Union representing them. He illustrated those promises by promptly saying, when Gilbertson raised the concern, not only that Readd had not been discharged, but that she ''wouldn't be.'' That announced decision and the other promises which preceded it were substantial unfair labor practices. They were made to a significant number of employees. They naturally tended to destroy the laboratory conditions under which representation elections should be conducted. Moreover, that meeting was followed by ongoing unfair labor practices.

On various dates after May 23, Hyde repeated his promise to deal directly with the employees and engaged in specific actions demonstrating his willingness to do so, he and Knispel coercively interrogated various employees, employees were told that Knispel had persuaded an employee to retrieve her signed authorization card and was going to try persuading at least one other employee to do so, and Knispel threatened termination of Respondent's schoolbus operations if the employees became represented by the Union. Some of the foregoing unfair labor practices are regarded as inherently serious ones. The unlawful words and actions occurred throughout almost the entire month leading up to mailing of the ballots. Many unfair labor practices were committed by Respondent's highest official, Owner Marvin Hyde. Therefore, I conclude that Respondent engaged in objectionable conduct which warrants sustaining the objections and setting aside the election conducted during June in Case 18–RC–15777.

CONCLUSIONS OF LAW

Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills has committed unfair labor practices, in violation of Section 8(a)(1) of the Act, affecting commerce, by promising to deal directly with employees if they would forego representation by United Food and Commercial Workers Union, Local 394, AFL–CIO, CLC, to resolve employee complaints and concerns more quickly than could be achieved through representation by that labor organization, and to consider monthly or bimonthly rotation of monitors, try getting full-time status for two part-time employees and not to discharge an employee who already had been told that she would be discharged; by granting wage increases and by compensating an employee for lost wages to discourage support for the above-named labor organization; by threatening to discontinue schoolbus operations if that labor organization became the employees' collective-bargaining agent and warning that its selection as their collective-bargaining agent would cause delay in addressing their complaints and concerns about terms and conditions of employment; by telling employees that a supervisor had persuaded one employee to retrieve a signed authorization card and intended to approach at least one other employee about doing so; and, by coercively interrogating employees about receipt of an election ballot and about employees' union activities, support and sympathies. Furthermore, Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills has engaged in conduct which is objectionable and which warrants setting aside the election conducted in Case 18–RC–15777.

REMEDY

Having concluded that Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and, further, to take certain affirmative action to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

Black Hills & Western Tours, Inc., d/b/a Gray Line of the Black Hills, Rapid City, South Dakota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising to deal directly with employees if they forego representation by United Food and Commercial Workers Union, Local 394, AFL–CIO, CLC, to resolve employees' complaints and concerns about employment terms and conditions more quickly than could be achieved through representation by that labor organization, and, to consider monthly or bimonthly rotation of monitors, to try getting full-time status for part-time employees; and to not discharge employees who already had been told of their discharge, as a means of

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

discouraging selection of that labor organization by employees as their collective-bargaining agent.

(b) Granting wage increases and compensating employees for lost wages to discourage employee support for the above-named labor organization.

(c) Threatening to discontinue schoolbus operations if the above-named labor organization became the collective-bargaining agent of employees and warning that its selection as their collective-bargaining agent would result in delays in addressing employees' complaints and concerns about terms and conditions of employment.

(d) Telling employees that supervisors had persuaded employees to retrieve authorization cards which they had signed for the above-named labor organization and that supervisors intended to approach other employees about retrieving cards which they had signed.

(e) Coercively interrogating employees about whether they had received a ballot for a National Labor Relations Board representation election and about their union activities, support, and sympathies.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Rapid City, South Dakota place of business, copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS RECOMMENDED that the election conducted in Case 18–RC–15777 be set aside and, further, that Case 18–RC–15777 be severed from Case 18–CA–13677 and remanded to the Regional Director for Region 18 for the purpose of conducting another election among employees in the appropriate unit.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT promise to deal directly with you if you forego representation by United Food and Commercial Workers Union, Local 394, AFL–CIO, CLC, or any other labor organization.

WE WILL NOT promise to resolve your employment complaints and concerns more quickly than could be achieved through representation by the above-named labor organization.

WE WILL NOT promise to consider monthly or bimonthly rotation of monitors, to try getting full-time status for part-time employees, and to not discharge employees who already have been told that they are to be fired, to discourage your support for the above-named labor organization.

WE WILL NOT grant wage increases and compensate you for lost wages to discourage your support for the above-named labor organization.

WE WILL NOT threaten to discontinue schoolbus operations if you choose the above-named labor organization as your collective-bargaining agent.

WE WILL NOT warn you that selection of the above-named labor organization as your collective-bargaining agent will delay addressing your complaints and concerns about terms and conditions of employment.

WE WILL NOT tell you that supervisors have persuaded employees to retrieve authorization cards which those employees have signed and WE WILL NOT tell you that supervisors intend to approach other employees about retrieving their signed authorization cards.

WE WILL NOT coercively interrogate you about whether you have received ballots for a representation election being conducted by the Board and WE WILL NOT coercively interrogate you about your union activities, support, and sympathies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by the National Labor Relations Act.

BLACK HILLS & WESTERN TOURS, INC., D/B/A
GRAY LINE OF THE BLACK HILLS